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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,751	03/10/2004	Jordan M. Flowers	2003-0089	9105

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EXAMINER

BRAHAN, THOMAS J

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 06/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/799,751	Applicant(s) FLOWERS ET AL.	
	Examiner Thomas J. Brahan	Art Unit 3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5 Aug 2004</u> . | 6) <input type="checkbox"/> Other: _____ |

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1. The following is a quotation of the second paragraph of 35 U.S.C. § 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which applicant regards as his invention.

2. Claims 1-18 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. FOR EXAMPLE:

- a. In claim 1, line 7, what does applicant mean with the limitation “a first and a second telescopic shaft having a first and a distal end”? Does this mean there are two distal ends or one end which is a distal end and one which is not”? Should this limitation be “a first end and a distal ends”? Note that line 9 of claim 1 has plural ends recited.

- b. In claim 1, line 8 refers to “said telescopic shaft”. However the previous line states that there are first and second telescopic shafts. Which telescopic shaft is being limited?

- c. In claim 1, line 9 how is applicant considering the expander as coacting? What is the other element that it “coacts” with? How can the claim recite one expander when two expanders are shown as performing this attachment feature?

- d. In line 9 of claim 1, how is the applicant considering the expander as between the distal ends of shaft (44)? The expanders (54 and 66) are beyond the distal ends, not between them.

- e. Claim 2, line 8 has a similar confusing limitation of a single expander “coacting” between the distal ends of the horizontal telescoping shaft. Claims 17 and 18 have a similar recitation for a single jack screw.

- f. It is unclear as to how claims 3 and 4 further limit the invention, as they are drawn to the vehicle compartment in which the hoist device is used, not to the device itself. These compartment limitations should be correlated with a structural feature of the base or of the telescopic shafts to further limit the hoist device.

- g. It is unclear as to how claim 4 can depend from claim 2, as claim 4 is specific to the van embodiment, while the van embodiment does not include the column mounting for the boom which is recited in claim 2. As the structure of claim 4 is not understood, it has not been treated below with a rejection based upon prior art.

- h. Claim 5 fails to further limit the invention, as it is drawn to the load being lifted, not to the hoist device being claimed.

- i. It is unclear as to how claim 13 can recite a third plate, when claim 13, and claim 2 from which it depends, do not include first and second plates.

- j. In claim 15, lines 3 and 4, the term “said vertical channel” lacks antecedent basis within the claims. Line 6 also includes the term “said vertical channel”.

- k. In claim 16, the terms “said vertical channel” and “said notch” lack antecedent basis within the claims. Should all these claims depend from claim 2, or should some depend from the claims that provide a basis for these terms? As the structures attempted to be recited in claims 15 and 16 are not understood, these claims have not been treated below with rejections based upon prior art

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3. The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103, the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 C.F.R. § 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103.

4. Claim 1, as best understood, is rejected under 35 U.S.C. § 103(a) as being unpatentable over Avakian in view of Mitchell or Kirkland. Avakian shows a hoist comprising a base (24), a telescoping shaft (18) having distal ends and an intermediate portion secured relative to the base, and a column (22) extending from the base for mounting a boom (14) which repositions the load into the vehicle compartment. Avakian varies from claim 1 by not having an expander to adjust the length of telescopic shaft (18). Mitchell shows a similar adjustable mounting with a threaded portion (11) for adjusting its length. Kirkland shows an expander (23) for adjusting its mounting length. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the hoisting device of Avakian by providing its telescopic shaft (18) with an expander, for adjustment of the mounting for a better tighter fit, as taught by Mitchell or as taught by Kirkland.

5. Claim 1, as best understood, is rejected under 35 U.S.C. § 103(a) as being unpatentable over Andrus et al in view of Mitchell or Kirkland. Andrus et al shows a hoist base for a Bruno Independent Living Aids hoist, see the Bruno et al reference cited by applicant, having a telescoping shaft (102) having distal ends and an intermediate portion secured relative to the base. Andrus et al varies from claim 1 by not having an expander to adjust the length of telescopic shaft (18). Mitchell shows a similar adjustable mounting with a threaded portion (11) for adjusting its length. Kirkland shows an expander (23) for adjusting its mounting length. It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the hoisting device of Andrus et al by providing its telescopic shaft (102) with a threaded expander, for adjustment and spanning the mounting area, as taught by Mitchell or as taught by Kirkland.

6. Claims 2, 3, 5, 7, 9-14, 17 and 18, as best understood, are rejected under 35 U.S.C. § 103(a) as being unpatentable over Andrus et al in view of Mitchell (cited by applicant) or Kirkland, as applied above to claim 1, and further in view of Nelson. Andrus et al, as modified shows the basic claimed hoist, but varies from claim 2 by having it braced horizontally instead of vertically. Nelson shows similar a hoist with a horizontal leg (23) and a vertical leg (29). It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the vehicle hoist of Andrus et al by having one leg extend horizontally and the other leg extending vertically, instead of having both legs extending horizontally, to better brace the hoist, as taught by Nelson. Andrus et al loads a personal mobility vehicle into an automobile trunk, as recited in claims 3, 5, 17 and 18. Nelson uses pins (55) as locking means, as recited in claim 7 and 9. Andrus et al has fasteners (106) through the holes of telescopic shafts, as

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recited in claims 10 and 12. The vertical leg and the horizontal leg would stabilize the base in three dimensions, as recited in claim 14.

7. Claim 6, as best understood, is rejected under 35 U.S.C. § 103(a) as being unpatentable over Andrus et al in view of Mitchell (or Kirkland) and Nelson, as applied above to claim 2, and further in view of Bergesen. Andrus et al, as modified shows the basic claimed hoist, but varies from claim 6 by not having a sliding connection for the base. Bergesen shows a similar adjustable hoist with a sliding base (9). It would have been obvious to one of ordinary skill in the art at the time the invention was made by applicant to modify the vehicle hoist of Andrus et al by having its base slidably mounted to the horizontal leg to allow relative adjustments between the leg and the base, as taught by Bergesen.

8. Claim 8 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of base claim 2, and rewritten to avoid the above rejections under 35 U.S.C. § 112.

9. Kersenbrock et al, Tuschen and Diggs are cited as showing related adjustably mounted hoists.

10. An inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Brahan whose telephone number is (571) 272-6921. The examiner's supervisor, Ms. Eileen Lillis, can be reached at (571) 272-6928. The fax number for all patent applications is (703) 872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Questions regarding access to the Private PAIR system, should be directed to the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Thomas J. Brahan
Primary Examiner
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